
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-03-NY-379
Angel Avena)	
Linden, NJ)	NAL/Acct. No. 200432380013
)	
)	FRN: 0010 3737 69

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 26, 2004

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Angel Avena has apparently violated Section 301 of the Communications Act of 1934, as amended, ("Act")¹, by operating an unlicensed radio transmitter on the frequency of 87.9 MHz. We conclude that Angel Avena is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On November 7, 2003, the New York Office received complaints about an illegal broadcast station located in Middlesex County, NJ, operating on the frequency 87.9 MHz.

3. On November 19, 2003, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 87.9 MHz in Linden, NJ. The agent observed an unauthorized radio broadcast on 87.9 MHz, and identified the source of the broadcast as an FM broadcast antenna on the roof of 18 East 17th Street, Linden, NJ 07306. The agent conducted a station inspection with Angel Avena, who acknowledged the operation of the unlicensed radio station. There was no evidence of a Commission authorization for this operation in Linden, NJ. The agent advised Angel Avena that a FCC station license is required for station operation.

4. On November 19, 2003, the New York Office sent a Warning Letter, by First Class Mail and Certified Mail Return Receipt Requested, to Angel Avena for unlicensed operation on the frequency 87.9 MHz.

5. On November 20, 2003, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 87.9 MHz in Linden, NJ. The agents observed an unauthorized radio broadcast on

¹ 47 U.S.C. § 301.

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87.9 MHz, and positively identified the source of the broadcast as an FM broadcast antenna on the roof of 18 East 17th Street, Linden, NJ 07306. The agents conducted a station inspection with Angel Avena, who again acknowledged the operation of the unlicensed radio station. There was no evidence of a Commission authorization for this operation on 87.9 MHz in Linden, NJ.

6. On December 1, 2003, the New York Office received a reply to the warning letter. In the reply letter, Angel Avena acknowledged the operation of transmitting equipment on 87.9 MHz at 18 East 17th Street, Linden, NJ 07306.

7. On January 6, 2004, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 87.9 MHz in Linden, NJ. The agent observed an unauthorized radio broadcast on 87.9 MHz, and positively identified the source of the broadcast as an FM broadcast antenna on the roof of 18 East 17th Street, Linden, NJ 07306. There was no evidence of a Commission authorization for this operation on 87.9 MHz in Linden, NJ.

8. On January 17, 2004, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 87.9 MHz in Linden, NJ. The agents observed an unauthorized radio broadcast on 87.9 MHz, and positively identified the source of the broadcast as an FM broadcast antenna on the roof of 18 East 17th Street, Linden, NJ 07306. There was no evidence of a Commission authorization for this operation in Linden, NJ.

III. DISCUSSION

9. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.

10. Based on the evidence before us, we find that Angel Avena operated radio transmission equipment on 87.9 MHz on November 19, 2003, November 20, 2003, January 6, 2004, and January 17, 2004, without a Commission authorization in willful² and repeated³ violation of Section 301 of the Act. A review of Commission's records showed that there was no evidence of a Commission authorization to operate this station on the frequency 87.9 MHz in Linden, NJ.

11. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount for operation without an instrument of authorization at \$10,000. In assessing the monetary forfeiture amount, we must take into

² Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴47 C.F.R. § 1.80.

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account the statutory factors set forth in Section 503(b)(2)(D) of the Act⁵, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules⁷, Angel Avena. is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Act.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Angel Avena SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200432380013 and FRN: 0010-3737-69.

15. Any response to this NAL must be mailed to Federal Communications Commission, New York Office, 201 Varick Street, New York, NY 10014, and MUST INCLUDE THE NAL/Acct. No. 200432380013.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

⁵47 U.S.C. § 503(b)(2)(D).

⁶47 U.S.C. § 503(b).

⁷47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

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18. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, DC 20554. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

19. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Angel Avena, 18 East 17th Street, Linden, NJ 07036.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – FCC Condensed List of Small Entities, October 2002